IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 134 of 2006
(Old Case No. 1769 of 1993)

Bachchi Ram son of Kishan Dutt
resident of village Dungri,
Patwari Circle Nalgaon, Tehsil Tharai,
District Chamoli .....Appellant

Versus

State of U.P. ------Opposite party

Sri M.S. Chauhan, Amicus Curiae for the appellant.
Sri S.S. Adhikari, learned AGA for the State.

Dated: 31.07.2007

Hon'ble Dharam Veer, J.

Heard Sri M.S. Chauhan, Amicus Curiae for the appellant and Sri S.S. Adhikari, learned AGA for the State.

This appeal has been preferred under Section 449 of the Criminal Procedure Code, 1973 against the order dated 07.09.1993 and 08.09.1993 passed by the Sessions Judge, Chamoli. The present appellant is surety bond of the appellant under Section 392, 395 & 506 IPC.

On 07.09.1993 the present appellant moved an application before the court below for requesting time to produce accused Rajendra Singh but the court below rejected the application and passed an order for forfeiture of the surety bonds and on the same day learned Sessions Judge passed an order for the attachment of the property of Rs.4,000/- of the appellant and ordered to issue attachment warrant of the property. The next date

was fixed 08.09.1993 and on 08.09.1993 the court below passed the order to register the case under Section 446 Cr.P.C. and has further directed to issue attachment warrant.

Learned Amicus Curiae has submitted that the procedure of Section 446 Cr.P.C. has not been followed as prescribed in the Act.

> As per Section 446 Cr.P.C. "**Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited,**
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> **or where in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited,**
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> **the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid."**

Learned Amicus Curiae has submitted that the appellant was not given any opportunity to pay the penalty thereof and without giving any opportunity or without serving show cause notice on him, the attachment order was passed and attachment warrant was issued. In this way the learned Sessions Judge has not followed the procedure as prescribed under Section 446 of Cr.P.C. Learned AGA has also conceded this point.

In view of the above procedure of Section 446 Cr.P.C., the order dated 08.09.1993 is hereby set aside. The order dated 07.09.1993 is confirmed up to the extent that the surety bond has been forfeited but the order for issuing the attachment warrant and for the attachment of the property of the appellant is hereby set aside.

The learned Sessions Judge, Chamoli is directed to proceed against the appellant as per the discussions made above and as per the provisions of Section 446 Cr.P.C.

With the above said observations the appeal is disposed of.

(Dharam Veer, J.)

July 31, 2007
RBS